Supreme Court, U.S.
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No._____

In the Supreme Court of the United States

October Term, 1997

Irene Skinner

vs.

The United States Railroad Retirement Board

PETITION FOR WRIT OF CERTIORARI
TO THE ELEVENTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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14 pp

QUESTION PRESENTED

1. Did the Railroad Retirement Board and the Court Appeals for the Eleventh Circuit incorrectly interpret Section 201 of Title II of Public Law 93-445 of the Railroad Retirement Act in denying that the Petitioners widows pension be administered under the Railroad Retirement of 1937?

2. Can vested rights which are absolute and contingent upon nothing be abrogated by the Railroad Retirement Act of 1974?

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Railroad Retirement Act of 1974 ..... 1, 2, 3, 4

OPINIONS BELOW

The United States Court of Appeals for the Eleventh District has affirmed the Railroad Retirement Board's Review of Petitioner's hearing and rehearing based on the Railroad Retirement Act of 1974.

JURISDICTION

Petitioner seeks a review of the judgement of the United States Court of Appeals for the Eleventh District.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

U.S. CONSTITUTION, ARTICLE I, SECTION 10:

> No state shall enter into any treaty, alliance or confederation, grant letters of marque and reprisal, coin money, emit bills of credit, make anything but gold and silver coins a tender in payment of debts, pass any bill of attainder, ex post facto law or law impairing the obligation of contracts, or grant any title of nobility." (emphasis added).

APPLICATION OF BAILEY, 37 NYS, 2D, 275, 280, 178, MISC. 1045 STATES:

> Neither the federal constitution nor the constitution of New York State contains any prohibition against retroactive laws as such except as to (ex post facto) which refer only to penal laws, and laws impairing the obligation of contract." (emphasis added).

SECTION 201 OF TITLE II OF PUB. L. 93-445 STATES:

The claims of individuals who, prior to the effective date of Title I of this Act****, became eligible for annuities, supplemental annuities or death benefits under section 2, 3(j), or 5 of the Railroad Retirement Act of 1937*** shall be adjudicate by the Board under that Act*** in the

same manner and with the same effect as if Title I of this Act*** had not been enacted.

STATEMENT OF THE CASE

Petitioner is the widow of Jerrold Skinner who was retired from the Seaboard Coastline Railroad on a disability annuity in 1967. He had completed thirty years of service. Jerrold Skinner died on May 19, 1995. His entire railroad career and his retirement were under the jurisdiction of the laws of the Railroad Retirement Act of 1937.

Petitioner applied for spousal annuity in 1984 when she reached the age of 62. Petitioner questioned the small amount awarded and received a vague explanation. Since Jerrold Skinner's pension was awarded under the laws of the 1937 Act it was assumed by the Petitioner that the spousal annuity was also awarded using the laws of the 1937 Act as a guideline.

Petitioner was a party to the contract between Jerrold Skinner and the railroad, but her spousal annuity was calculated using the laws of the Act of 1974. When did the vested rights of the Petitioner become moot? Vested rights are fixed, settled, absolute and not contingent upon anything. Section 201 of Title II of Pub. L. 93-445 states:

> The claims of individuals who, prior to the effective date of Title I of this Act*** became eligible for annuities, supplemental annuities or death benefits under section 2, 3(j), or 5 of the Railroad Retirement Act of 1937*** shall be same manner and with the same effect as if Title I of this Act*** had not been enacted.

At the time the spousal annuity was awarded, Jerrold Skinner was alive as was his contract with the Railroad Retirement Board and to that contract the Petitioner was a participating party. The awarding of the spousal annuity using the laws of the Act of 1974 was in direct violation of the above quote of the laws of the Act of 1974. As a party to the contract between Jerrold Skinner, his spouse, and the Railroad

Retirement Board everything after the last sentence of the above quote does not apply to the Petitioner. Petitioner is excluded from anything in the Act that follows that sentence.

Petitioner applied for spousal benefits in August of 1984, and with that application she waived nothing. Petitioner does not intend for her vested rights to be disregarded by the misinterpretation of what is, at best, a misleading law. Petitioner is excluded from any law that follows the 1937 Act. The Act of 1974 does not address vested rights.

At the death of Jerrold Skinner the Petitioner was awarded as a widow's pension $100. per month as calculated under the laws of the 1974 Act. For three years petitioner has pursued all available avenues of appeal maintaining that the wrong law had been applied in calculating her pension. Petitioner has been denied at every level.

For three years Petitioner has maintained correctly that she became "eligible" for a widows pension when Jerrold Skinner received his first pension check. She was eligible in the same way that the beneficiary of a life insurance policy purchased from a life insurance company is eligible. As long as the premiums are paid the beneficiary is eligible. The beneficiary cannot collect until all the qualifications are filled, i.e. the insured is dead.

The eligibility of the Petitioner has been present since Jerrold Skinner's retirement. Petitioner has now fulfilled the last requirement by becoming a widow.

Jerrold Skinner and Petitioner lived for 29 years with his pension being administered under the laws of the Act of 1937. When Jerrold Skinner died in 1995 that contract did not die but was passed on to the Petitioner and all the rights and obligations of that contract should have been intact. Had Jerrold Skinner died in 1973 there would have been no question.

The wrong interpretation of the 1974 laws of the Act of 1974 is

an attempt to place the Petitioner under the laws of the wrong Act without regard to contractual obligation. Petitioner is excluded from all application of the laws of the Act of 1974 by the exclusionary clause of the Act of 1974. The Petitioners contract is still valid and binding and demands to the honored under the laws of the Railroad Retirement Act of 1937. Petitioner is the survivor of a legal and binding contract.

Spousal benefits and widows benefits both should be recalculated using the laws of the 1937 Railroad Retirement Act which have never been repealed.

WHY THE WRIT SHOULD BE GRANTED

Neither the attorneys for the Railroad Retirement Board nor the Petitioner could find any cites that are directly relevant to this case. This particular abuse of vested rights and contractual obligation has apparently not been tested in a court of law up to this time. The decision of the Court of Appeals for the Eleventh Circuit should be reversed as the Railroad Retirement Act of 1974 specifically excludes Petitioner from any action of its laws and leaves the entire case to be administered under the laws of the Railroad Retirement Act of 1937. Anyone whose vested rights have been denied would benefit from this decision.

CONCLUSION

Petitioner respectfully requests that this Court issue a writ of certiorari to review the judgement of the United States Court of Appeals for the Eleventh Circuit.

July 1, 1998

Respectfully submitted,
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UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 97-2509
NON-ARGUMENT CALENDAR

U.S.R.R.B. NO. WA707-09-1408

Irene Skinner,

Petitioner

vs.

United States Railroad Retirement Board,

Respondent.

PETITION FOR REVIEW OF AN ORDER OF THE RAILROAD RETIREMENT BOARD

Before COX and DUBINA, Circuit Judges, and RONEY, Senior Circuit Judge.

JUDGEMENT

This cause came to be heard on the petition of Irene Skinner for review of an order of the United States Railroad Retirement Board, and was taken under submission by the Court upon the record and briefs on file, pursuant to Circuit Rule 34-3;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the **order** of the Railroad Retirement Board in this cause be and the same is hereby **AFFIRMED.**

Entered: February 13, 1998

FOR THE COURT
Thomas K. Kahn, Clerk

Matt Davidson
Deputy Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 97-2509
NON-ARGUMENT CALENDAR

U.S.R.R.B. NO. WA707-09-1408

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PETITION FOR REVIEW OF AN ORDER OF THE RAILROAD RETIREMENT BOARD

Before COX and DUBINA, Circuit Judges, and RONEY, Senior Circuit Judge.

PER CURIAM

Irene Skinner appeals a decision of the Railroad Retirement Board ("Board") concerning the computation of her widow's annuity.

Jerrold R. Skinner, a railroad employee, last worked in 1967, and was found eligible for an annuity effective December 1, 1968. He died on May 19, 1995. Petitioner, Irene Skinner, his wife, became eligible for a spouse's annuity in August 1984, the first full month after she became 62 years of age. After Mr. Skinner's death the *spouse's* annuity was converted on May 1, 1995, into a *widow's* annuity, pursuant to the Railroad Retirement Act of 1974, 45 U.S.C. § 231 (1994). Petitioner Skinner requested reconsideration of the amount of her widow's benefit, arguing that her husband's rights in the Railroad Retirement program, and consequently her own, had fully vested in 1968 under the Railroad

Retirement Act of 1937, Ch. 38A, 50 Stat. 307 (1937), before it was revised and replaced by the Railroad Retirement Act of 1974, 45 U.S.C. § 231 (1994). Although annuity payments under the 1937 scheme were calculated without regard to Social Security benefits, the 1974 Railroad Retirement Act reduces a former railroad employee's annuity by the amount of Social Security benefits received by the annuitant. Therefore, petitioner would receive significantly higher payment if her annuity was calculated according to the 1937 rather than the 1974 Act. Failing to get a favorable decision after pursuing all of her administrative remedies, she seeks review here of the decision calculating her annuity according to the 1974 Act.

The Board correctly applied the 1974 Act to the computation of petitioner's widow's benefit. She did not become eligible for a spouse's annuity until 1984, or for the widow's benefit until 1995, both dates subsequent to the effective date of the 1974 Act of January 1, 1975, which provides:

> The claims of individuals who, prior to the effective date of Title I of this [1974] Act ...became eligible for annuities, supplemental annuities, or death benefits under section 2, 3(j), or 5 of the Railroad Retirement Act of 1937... shall be adjudicated by the Board under that Act... in the same manner and with the same effect as if title I of this Act... had not been enacted: Provided, however, That no annuity, supplemental annuity, or death benefit shall be awarded under the Railroad Retirement Act of 1937... on the basis of an application therefor filed with the Board on or after the effective date of Title I of this Act: Provided further, That... no annuity or supplemental annuity under the Railroad Retirement of 1937... shall be payable for any month after December 31, 1974.

45 U.S.C.A. § 231, historical note, transitional provision § 201 (1974).

The statute thus specifically precludes an award of any annuity based on an application filed after the effective date of the 1974 Act. Additionally, the drafters of the 1974 Railroad Retirement Act considered claims similar to petitioner's and made provisions addressing her concerns. Specifically, the Act contains grandfather clauses which

increase the annuities of spouses and widows whose husbands (or wives) had completed their railroad employment before passage of the 1974 Act. These clauses account for the decreased annuity values provided by the 1974 Act due to the subtraction of Social Security benefits. 45 U.S.C. §§ 231c(e), 231c(h). These savings clauses, however, are reserved for individuals who had already been determined to be entitled to these benefits prior to August 13, 1981. *Id.* Because Skinner did not qualify for any type of annuity until 1984, she clearly is not entitled to the computation provisions of the 1937 Act. Even if it could be argued that the statute is not entirely clear, this court would accord great deference to the reasonable interpretation of the statute by the agency charged with administering that regulatory scheme. *See Chevron U.S.A. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 743-45 (1984); Borden v. Meese,* 803 F.2d 1530, 1535 (11th Cir. 1986).

Skinner's argument that her rights to the annuity vested when her husband began receiving benefits under the 1937 Act, thus placing her own annuity under the 1937 Act, was properly rejected by the Board. According to the terms of the statute, Skinner was not entitled to benefits until she had fulfilled all the requirements for eligibility and filed an application for the widow's annuity. *See* 45 U.S.C. § 231a (1994); 20 C.F.R. § 216 (1997).

Skinner's claim that the Board's use of the 1974 Act to calculate her annuity violates the ex post facto clause fails because the constitutional prohibition against the passage of ex post facto laws applies exclusively to penal or criminal statutes. *See Collins v. Youngblood,* 497 U.S. 37, 41, 110 S Ct. 2715, 2718-19, 111 L.Ed.2d 30 (1990).

Affirmed.

RAILROAD RETIREMENT BOARD

Appeal of

Manila I. Skinner

Railroad Retirement Act
Claims Appeal Docket No. 96-AP-0001

R.R.B. No. WA-707-09-1408

The Board has reviewed the record in the appeal of Manila I. Skinner from a decision by the hearings officer that her widow's insurance annuity has been computed correctly under the applicable provisions of law. In this appeal, Mrs. Skinner disputes the hearings officer's finding that her entitlement to survivor benefits is established under the Railroad Retirement Act of 1974 ("the 1974 Act"). Mrs. Skinner believes that her entitlement to survivor benefits arises under the Railroad Retirement Act of 1937 ("the 1937 Act").

Mrs. Skinner became entitled to a widow's insurance annuity with an annuity beginning date of May 1, 1995. Her widow's annuity was awarded and computed under the provisions of the 1974 Act, which became effective on January 1, 1975.

Mrs. Skinner argues that her entitlement to survivor benefits arises under the 1937 Act, and offers in support for her appeal the first portion of the transitional provision of the 1974 Act, Section 201 of Title II of Pub.L. 93-445, as amended by later public laws (see, 45 U.S.C.A. § 231, Historical Note, p. 363):

> The claims of individual who, prior to the effective date of Title I of this Act ***, became eligible for annuities, supplemental

> annuities, or death benefits under section 2, 3(j), or 5 of the Railroad Retirement Act of 1937 *** shall be adjudicated by the Board under the Act *** in the same manner and with the same effect as if Title I of this Act *** had not been enacted.

This portion of the transitional provision, however, [applies only to individuals *who became eligible* for annuities or death benefits under the 1937 Act. Mrs. Skinner did not become eligible for her widow's insurance annuity until 1995.] Further, Mrs. Skinner has omitted the portion of the transitional provision which applies directly to her claim. Section 201 of Title II, as cited above, continues as follows:

> *Provided, however,* That no annuity, supplemental annuity, or death benefit shall be awarded under the Railroad Retirement Act of 1937 *** on the basis of an application therefor filed with the Board on or after the effective date of Title I of this Act: *Provided further,* That no annuity under the Railroad Retirement Act of 1935 ***, no annuity or supplemental annuity under the Railroad Retirement Act of 1937 *** shall be payable for any month after December 31, 1974.

This portion of the transitional provision is the legal basis for the award and computation of Mrs. Skinner's widow's insurance annuity under the 1974 Act. The application for her widow's insurance annuity was filed after January 1, 1975, the effective date of Title I of the 1974 Act (see, Pub.L. 93-445, §§ 602(a)-(d) as cited in 45 U.S.C.A. § 231, Historical Note, p. 362).

The Board affirms and adopts the decision of the hearings officer.

The appeal is denied.

s/ Glen L. Bower

s/ V. M. Speakman, Jr.

s/ Jerome F. Kever